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APPLICATION NO. FILING DATE FIRST NAMED INVENTOR ATTORNEY DOCKET NO. CONFIRMATION NO. 10/075,726 02/14/2002 Torsten Zech C 2397 COGG 1641 23657 09/14/2004 **EXAMINER COGNIS CORPORATION** ALEXANDER, LYLE PATENT DEPARTMENT 300 BROOKSIDE AVENUE ART UNIT PAPER NUMBER AMBLER, PA 19002 1743

DATE MAILED: 09/14/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary    Tom MAILING DATE of this communication appears on the cover sheet with the correspondence address   Period for Reply			Application No.	Applicant(s)	( '	
Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE of this communication appears on the cover sheet with the correspondence address = Period for Reply  A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.  THE MAILING DATE OF THIS COMMUNICATION is not covered to the provide of the provided of the service manufacture of the provided of the service manufacture of the provided of		Office Action Summan	10/075,726	ZECH ET AL.	7	
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1) Responsive to communication(s) filed on	- External control con	IMAILING DATE OF THIS COMMUNICATION.  nsions of time may be available under the provisions of 37 CFR 1.13  SIX (6) MONTHS from the mailing date of this communication.  e period for reply specified above is less than thirty (30) days, a reply  period for reply is specified above, the maximum statutory period  period for reply within the set or extended period for reply will, by statute,  reply received by the Office later than three months after the mailing	36(a). In no event, however, may a reply be ti within the statutory minimum of thirty (30) da will apply and will expire SIX (6) MONTHS from	imely filed  ys will be considered timely. In the mailing date of this comment	nunication.	
2a)  This action is FINAL. 2b)  This action is non-final.  3)  Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under Ex parte Quayle, 1935 C.D. 11, 453 O.G. 213.  Disposition of Claims  4)  Claim(s) 1-20 is/are pending in the application. 4a) Of the above claim(s) is/are withdrawn from consideration.  5)  Claim(s) is/are allowed.  6)  Claim(s) 1-20 is/are rejected.  7)  Claim(s) is/are objected to. 8)  Claim(s) is/are objected to. 8)  Claim(s) is/are objected to restriction and/or election requirement.  Application Papers  9)  The specification is objected to by the Examiner.  10)  The drawing(s) filed on is/are: a) accepted or b) objected to by the Examiner.  Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).  11)  The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.  Priority under 35 U.S.C. § 119  12)  Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  a)  All b)  Some * c) None of:  1.  Certified copies of the priority documents have been received in Application No.  2.  Certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  * See the attached detailed Office action for a list of the certified copies not received.	Status					
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	Paper	No(s)/Mail Date <u>7/2/02</u> .	5)  Notice of Informal Pa	atent Application (PTO-152	2)	
5. Patent and Trademark Office FOL-326 (Rev. 1-04)  Office Action Summary  Part of Paper No./Mail Date 20040909	S. Patent and Tra					

Application/Control Number: 10/075,726

Art Unit: 1743

## **Double Patenting**

The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970);and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

Claims 1-20 are provisionally rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-10 of copending Application No. 10/076,736 (as characterized by US 2002/0192118). Although the conflicting claims are not identical, they are not patentably distinct from each other because both are directed to microreactors of identical composition and size.

This is a <u>provisional</u> obviousness-type double patenting rejection because the conflicting claims have not in fact been patented.

## Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless -

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(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1-6,8 and 10-20 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Srinivasan et al.

Srinivasan et al. teach a microfabricated microdetection array made of a glass/silicon composition. The array has a plurality of reaction spaces. Paragraph [0046] teaches use of a silicon dioxide coating that has a thickness indistinguishable from the claimed range.

## Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

The factual inquiries set forth in *Graham* v. *John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

- 1. Determining the scope and contents of the prior art.
- 2. Ascertaining the differences between the prior art and the claims at issue.
- 3. Resolving the level of ordinary skill in the pertinent art.
- 4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of

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the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

Claims 7 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over Srinivasan et al.

See Srinivasan et al. supra.

Srinivasan et al. is silent to the claimed length of the reaction channel and the mixing angle.

The court decided <u>In re Boesch</u> (205 USPQ 215) that optimization of a result effective variable is ordinarily within the skill of the art. A result effective variable is one that has well known and predictable results. The length of a reactor has the predictable, well-known and expected result of slowing down the analysis time and permitting more of the reaction to take place. Balancing the time of a analysis and the completeness of the reaction is a result effective variable. Similarly, the mixing angle is a result effective variable that has the predictable, well known and expected result of controlling the amount of turbulence created when the mixing occurs. Too much turbulence could denature or damage the sample/reagents and not enough would result in incomplete mixing.

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It would have been within the skill of the art to modify Srinivasan et al. and choose a reaction channel having a length of 1 to 500 mm and a mixing angle of 15' to 270' as optimization of result effective variables to achieve the predicted, well known and expected results described above.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Lyle A Alexander whose telephone number is 571-272-1254. The examiner can normally be reached on Monday, Wednesday and Friday.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Lyle A Alexander Primary Examiner Art Unit 1743

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